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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,296	06/21/2001	Thomas E. Tarara	0054.10	6348
21968	7590	12/07/2004	EXAMINER	
NEKTAR THERAPEUTICS 150 INDUSTRIAL ROAD SAN CARLOS, CA 94070			GOLLAMUDI, SHARMILA S	
			ART UNIT	PAPER NUMBER
			1616	
DATE MAILED: 12/07/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/886,296

Applicant(s)

TARARA ET AL.

Examiner

Sharmila S. Gollamudi

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 October 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 22 October 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

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Applicant argues that Hanes et al do not teach bulk density and rather teaches tap density.

Applicant argues that the limitation that the phospholipid comprises a gel to crystal transition temperature of greater than 40 degrees Celsius.

Applicant's arguments have been fully considered but they are not persuasive. Firstly, the examiner acknowledges that the bulk density is not explicitly taught. However, it is the examiner's position that the bulk density and tap density are related and one of ordinary skill in the art can derive bulk density from the tap density. Hanes also teaches this on column 14, lines 35-40 wherein Hanes teaches the bulk density was estimated from the tap density. Therefore, absent data demonstrating otherwise and since the particles taught by Hanes have the same aerodynamic and geometric diameter and are light particles, it is the examiner's position that Hanes's particles have instant bulk density.

With regard to the limitation of claim 40, the examiner points out that Hanes teaches the same phospholipids and this limitation is an inherent feature of the claimed phospholipids. Thus, the prior art need not teach every inherent property of an element to read on the claim limitation.

Applicant argues that adding the instant calcium taught in Cohen et al to Hanes et al "might" provide for a continuous sheet of material and not discrete separable particles.

Applicant has not provided any data substantiating this argument. On column 6, lines 19-25, Hanes teaches the use of acrylic polymers, methacrylic acid polymer, and polyvinyl polymers. On column, 4, lines 1-5, Cohen teach that in the process of coacervation, polymers such as polyacrylic acids, polymethacrylic acid, PCPP, polyvinyl compounds are reacted with cations such as calcium to yield microspheres. Absent unexpected data, the rejection is

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maintained since Hanes teaches the particles may be made by any conventional process known in the art such as coacervation and Cohen teaches the coacervation process using calcium ions.

For the reasons above and absent evidence providing the unexpectedness of utilizing calcium, the rejection is maintained.

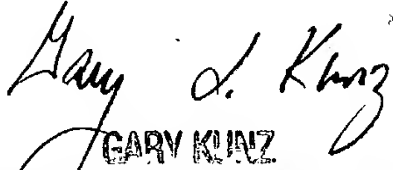
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is 571-272-0614. The examiner can normally be reached on M-F (8:00-5:30), alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sharmila S. Gollamudi
Examiner
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SSG


GARY KUNZ
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600